IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.354 (MS) OF 2006

Manoj Kumar,
S/o Sri Rajendra Kumar Agarwal,
R/o Gandhi Nagar,
P.O. Bazpur, Distt. Udham Singh.

.....Petitioner.

Versus

1. The State Transport Appellate Tribunal, Dehradun, through its Chairman.
2. The Regional Transport Authority, Kumaon, Kusum Khera, P.O. Haldwani, Distt. Nainital.
3. Sri Sunil Kumar Nanda, S/o Sri S.P. Nanda, R/o Ganga Sadan, Saket Colony, P.O. Haldwani, Distt. Nainital.
4. Smt. Ranjana Nanda, W/o Sri Sunil Kumar Nanda, R/o Ganga Sadan, Saket Colony, P.O. Haldwani, Distt. Nainital. .....Respondents.

Mr. D.K. Aggarwal, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 10.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri D.K. Agarwal, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2. Both the parties have agreed that let the matter be disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for re-hearing of the revision NO. 9 of 2005 on the ground that the same has proceeded ex prate.

Briefly stated, in respect of Permit No. 285/2004 granted by the R.T.A. Kumaon and thereafter after its renewal,

a committee was constituted in its meeting dated 30.08.2005, which issued temporary permits in favour of the respondents no. 3 and 4 on the Route Haldwani-Kaladungi-Bazpur-Doraha-Kashpur. Petitioner has challenged the order-dated 30.08.2005 in provisional jurisdiction and status quo was maintained. However, the petitioner has submitted that thereafter without hearing the petitioner, the revision has been decided ex parte.

The petitioner has submitted that the date was fixed 05.01.2006, but the case has been decided on 04.01.2006 in absence of he petitioner and thereafter, the date was fixed as 17.01.2006 and now the matter has been decided on 27.01.2006 as will appear from the order itself.

The petitioner has submitted that on 27.01.2006 the matter was listed for 5th January, 2006, which he has noted but the grievance of the petitioner is that the order has been passed on 4th January, 2006 without giving any opportunity of hearing to the petitioner.

In the case of ***G.P. Srivastava Vs. R.K. Raizada and others, 2000 (91) RD Page 325,*** *the division bench of the Apex Court has held as under:-*

"Under Order 9 Rule 13 C.P.C. an ex parte decree passed against a defendant can be set aside upon scatisfaction of the Court hat either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing which the suit was called on for hearing. Unless 'sufficient cause, is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex-parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or

inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has be construed as elastic expression for which no hard and fast guidelines can be prescribed. The courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non-appearance of the defendant on the date fixed for hearing when ex-parte proceedings initiated against him, he cannot be penalized for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the list decided on merits."

In view of the above, a writ of certiorari is issued quashing the order-dated 27-01-2006 passed by the State Transport Appellate Tribunal, respondent no. 1 in Revision No. 9/2005.

The matter is sent back to the Tribunal for deciding the matter afresh after giving opportunity of hearing to the petitioner.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.4.2006
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